

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

EDERICK FABRIZIO, a/k/a Ederick Fabricio,

Plaintiff,

v.

9:20-CV-0011
(GTS/ML)

SUPT. BRANDON SMITH; IGP T. MAURO;
C.O. RILEY; C.O. OLIVER; and C.O. LASTER,

Defendants.

APPEARANCES:

EDERICK FABRIZIO
Plaintiff, *Pro Se*
Calle 13-A DDY
Villa del Rey IV
Caguas, Puerto Rico 00727

HON. LETITIA A. JAMES
Attorney General for the State of New York
Counsel for Defendants
The Capitol
Albany, New York 12224

DAVID C. WHITE, ESQ.
Assistant Attorney General

GLENN T. SUDDABY, Chief United States District Judge

DECISION and ORDER

Currently before the Court, in this *pro se* prisoner civil rights action filed by Ederick Fabrizio (“Plaintiff”) against the five above-captioned employees of the New York State Department of Corrections and Community Supervision (“Defendants”), is United States Magistrate Judge Miroslav Lovric’s Report-Recommendation recommending that Defendants’ motion to dismiss for failure to state a claim be granted with respect to Plaintiff’s retaliation claim against Defendant Laster based upon the March 2018 search and Plaintiff’s retaliation

claims against Defendants Mauro and Smith, but that Defendants' motion be denied in all other respects. (Dkt. Nos. 33, 39, 42.) The parties have not filed objections to the Report-Recommendation, and the deadline by which to do so has expired. (*See generally* Docket Sheet.)

After carefully reviewing the relevant papers herein, including Magistrate Judge Lovric's thorough Report-Recommendation, the Court can find no clear-error in the Report-Recommendation.¹ Magistrate Judge Lovric employed the proper standards, accurately recited the facts, and reasonably applied the law to those facts. As a result, the Report-Recommendation is accepted and adopted in its entirety for the reasons set forth therein, and Defendants' first motion to dismiss is granted in part and denied in part as recommended in the Report-Recommendation.

ACCORDINGLY, it is

ORDERED that Magistrate Judge Lovric's Report-Recommendation (Dkt. No. 42) is **ACCEPTED** and **ADOPTED** in its entirety; and it is further

ORDERED that Defendants' motion to dismiss for failure to state a claim (Dkt. No. 33) is **GRANTED in part** with respect to the following claims:

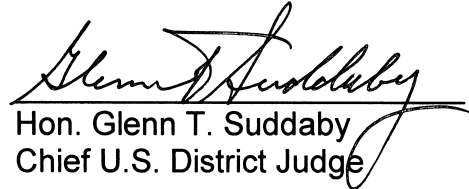
- (1) Plaintiff's retaliation claim against Defendant Laster based upon the March 2018 search; and

¹ When no objection is made to a report-recommendation, the Court subjects that report-recommendation to only a clear error review. Fed. R. Civ. P. 72(b), Advisory Committee Notes: 1983 Addition. When performing such a "clear error" review, "the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." *Id.*; see also *Batista v. Walker*, 94-CV-2826, 1995 WL 453299, at *1 (S.D.N.Y. July 31, 1995) (Sotomayor, J.) ("I am permitted to adopt those sections of [a magistrate judge's] report to which no specific objection is made, so long as those sections are not facially erroneous.") (internal quotation marks omitted).

(2) Plaintiff's retaliation claims against Defendants Mauro and Smith; and it is further

ORDERED that Defendants' motion to dismiss (Dkt. No. 33) is **DENIED in part** in all other respects.

Dated: June 1, 2021
Syracuse, New York


Hon. Glenn T. Suddaby
Chief U.S. District Judge